

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Ricky Lee Lidel,

Case No. 22-cv-02918 (KMM/LIB)

Plaintiff,

v.

**ORDER**

Guy Bosch, et. al,

Defendants.

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The above matter comes before the Court upon the Report and Recommendation (R&R) of United States Magistrate Judge Leo I. Brisbois, dated May 12, 2023. Mr. Lidel has filed objections. For the reasons set forth below, the Court accepts the R&R and denies Mr. Lidel's official capacity claims for monetary relief without prejudice.

After an R&R is issued, a party may "serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2). "The objections should specify the portions of the magistrate judge's report and recommendation to which objections are made and provide a basis for those objections." *United States v. Miller*, Crim. No. 20-232(19) (JRT/BRT), 2022 WL 3644894, at \*2 (D. Minn. Aug. 24, 2022) (quoting *Mayer v. Walvatne*, No. 07-1958, 2008 WL 4527774, at \*2 (D. Minn. Sept. 28, 2008)). The Court reviews de novo those portions of the R&R to which specific objections are made, and it "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." See 28 U.S.C. §636(b)(1)(C); Fed. R. Civ. P. 72(b)(3); D. Minn. LR 72.2(b)(3).

## **I. Background**

Mr. Lidel does not object to the R&R's factual findings, and the Court recounts the relevant facts here only briefly. Mr. Lidel is a prisoner incarcerated at the Minnesota Correctional Facility in Faribault, Minnesota. On February 28, 2023, Judge Brisbois issued an Order and Report and Recommendation in this matter. [February 2023 Order/R&R, ECF No. 37.] The February 2023 Order/R&R explained that, as pleaded, the Complaint violated the joinder provisions of the Federal Rules of Civil Procedure. [*Id.* at 6–8.] And the Court ordered Mr. Lidel to submit an amended complaint. [*Id.* at 12.]

On March 13, 2023, Mr. Lidel filed his Motion to Amend with an amended complaint. [Amended Complaint, ECF 39-1.] In his amended complaint, Mr. Lidel names as defendants Jesse Pugh, who is identified as MCF-Rush City's warden; Paul Schnell, identified as the commissioner of the Minnesota Department of Corrections; and three doctors, Deb Zinken, Robert Fornal, and William Mays, who Mr. Lidel alleges work at Minnesota correctional facilities. [*Id.* at 1–3, 6–8.] All the defendants are sued in their individual and official capacities. [*Id.* at 9.]

On May 12, 2023, Judge Brisbois issued a second Order and Report and Recommendation in this matter. [May 2023 Order/R&R, ECF No. 44.] The R&R examined Mr. Lidel's amended complaint and found that because all the individual defendants are employees of the State of Minnesota, "any official capacity claims against them are effectively official capacity claims against the State of Minnesota." [*Id.* at 4.] Having made the above-mentioned determination, the R&R explained that: (1) the Eleventh Amendment applies to this case, (2) "[i]t is well established that § 1983 claims do not bypass Eleventh

Amendment sovereign immunity, [and] (3) . . . the Supreme Court has established that individuals acting in their official capacities are not “persons” suable under § 1983.” [*Id.*] The R&R further observed that there is no indication that the State of Minnesota has consented to be sued for damages pursuant to claims like Mr. Lidel’s § 1983 official capacity claim. [*Id.* at 5.] Therefore, the R&R recommends that Mr. Lidel’s § 1983 official capacity claims for monetary damages be dismissed without prejudice for lack of subject matter jurisdiction.

## **II. Discussion**

In his objections, Mr. Lidel appears to drop his official capacity claims against the defendants and instead “elects to sue all defendants individually and severally . . . .” for compensatory and punitive damages. [Objections, ECF 47, at 1.] From the Court’s reading of Mr. Lidel’s objection, Mr. Lidel does not object to any finding or conclusion from the R&R. And to the extent that Mr. Lidel intended to object to a finding or conclusion from the R&R, the Court finds the R&R made no error.

### **IT IS HEREBY ORDERED:**

1. The Report and Recommendation [ECF No. 44] is **ACCEPTED**.
2. Mr. Lidel’s § 1983 official capacity claims for monetary damages are **DISMISSED** without prejudice for lack of subject matter jurisdiction.

Date: July 13, 2023

s/ Katherine M. Menendez

Katherine M. Menendez  
United States District Judge